

Pro Se 8 (Rev. 12/16) Complaint for Violation of Fair Labor Standards

## UNITED STATES DISTRICT COURT

for the  
District of Nevada

Civil Division

Heath V. Fulkerson

Case No.

3:20-cv-00516

(to be filed by the Clerk's Office)

## Plaintiff(s)

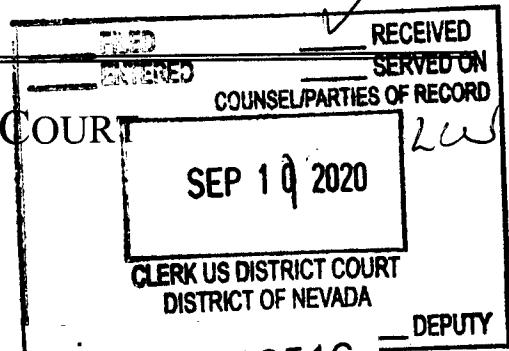
(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

James Hardie Building Products, Inc., et al.

## Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Jury Trial: (check one) ☒ Yes ☐ No

## COMPLAINT FOR VIOLATION OF FAIR LABOR STANDARDS

## I. The Parties to This Complaint

## A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Heath V. Fulkerson
Street Address	P.O. Box 60686
City and County	Reno
State and Zip Code	NV, 89506
Telephone Number	(775) 404-2026
E-mail Address	heathfulkerson999@gmail.com

## B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

## Defendant No. 1

Name	James Hardie Building Products, Inc.
Job or Title <i>(if known)</i>	
Street Address	3000 Waltham way
City and County	Sparks
State and Zip Code	NV, 89434
Telephone Number	(775)355-3000
E-mail Address <i>(if known)</i>	

## Defendant No. 2

Name	Paul Lodenstein
Job or Title <i>(if known)</i>	H.R. Manager
Street Address	3000 Waltham way
City and County	Sparks
State and Zip Code	NV, 89434
Telephone Number	
E-mail Address <i>(if known)</i>	

## Defendant No. 3

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

## Defendant No. 4

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

**C. Place of Employment**

The address at which I am employed or was employed by the defendant(s) is

Name	James Hardie Building Products, Inc.
Street Address	3000 Waltham way
City and County	Sparks
State and Zip Code	NV, 89506
Telephone Number	(775) 355-3000

**II. Basis for Jurisdiction**

This action is brought pursuant to *(check all that apply)*:

- ☒ Fair Labor Standards Act, as codified, 29 U.S.C. §§ 201 to 209.
- ☒ Relevant state law
- ☐ Relevant city or county law

**III. Statement of Claim**

State as briefly as possible the facts of your case. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Nature of employer's business:  
Manufacturing plant

- B. Dates of employment:  
10/02/2018- 09/10/2020

- C. Employee's job title and a description of the kind of work done:  
Machine Operator- operated stationed equipment used for the loading and unloading of building products.

- D. Rate, method, and frequency of wage payment:

\$21.66 per hour at 48-60 hours per week paid every 2 weeks. Medical, Dental, and Vision insurance is paid by the employer out of every pay check.

---

E. Number of hours actually worked each week in which a violation is claimed:

I normally work 48-60 hours per week and was injured on the job. the work injuries are still in the State of Nevada DIR system and recently I was cleared by my doctors to return to work. James Hardie was unwilling to offer me my original position back and after filing a whistleblower complaint with OSHA as well as a work place environmental complaint, James Hardie fired me by FEDEX with a letter and a check.

---

F. Description of the alleged violation(s) *(check all that apply)*:

☐

Failure to pay the minimum wage *(explain)*

---

☐

Failure to pay required overtime *(explain)*

---

☒

Other violation(s) *(explain)*

Violation of the OSHA whistleblower protection program, discrimination against a person with a disability, retaliation and wrongful termination, and violations of my federal employee rights

---

G. Date(s) of the alleged violation(s):

09/02/2019, 10/08/2019, 08/26/2020, 09/10/2020

---

H. Additional facts:

The defendants have acted in retaliation by wrongfully terminating myself as an employee while i am a protected employee by filing complaints with the OSHA whistleblower protection program, the EEOC, the DOJ, and The Department of Labor

---

**IV. Relief**

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

I am seeking an immediate injunction with regards to offering my employment back, at the same rate as when I had to take a medical leave of absence for work related injuries. I am also seeking actual damages in excess of \$500,000. Punitive damages in excess of \$500,000. Compensatory damages in excess of \$500,000

---

**V. Certification and Closing**

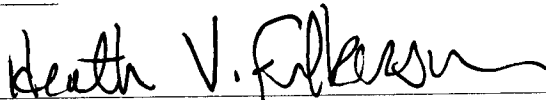
Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 09/10/2020

Signature of Plaintiff



Printed Name of Plaintiff

Heath V. Fulkerson

**B. For Attorneys**

Date of signing: \_\_\_\_\_

Signature of Attorney

N/A

Printed Name of Attorney

Bar Number

Pro Se 8 (Rev. 12/16) Complaint for Violation of Fair Labor Standards

---

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address



Occupational Safety and Health Administration

[CONTACT US](#) [FAQ](#) [A TO Z INDEX](#) [ENGLISH](#) [ESPAÑOL](#)

[OSHA](#) [STANDARDS](#) [TOPICS](#) [HELP AND RESOURCES](#)

[Back to Whistleblower Protection Program Complaint Form](#) / [OSHA Online Whistleblower Complaint Form](#)

[Ver esta página en español](#)

## OSHA ONLINE WHISTLEBLOWER COMPLAINT FORM

[Instructions](#)



US Department of Labor  
Occupational Safety and Health Administration  
Notice of Whistleblower Complaint

OMB # 1218-0236

### Have you suffered an "adverse action"?

To have a valid complaint, you must allege that your employer took at least one "adverse action" against you. An action is "adverse" if it negatively affected your conditions of employment in any way (see examples below).

If yes, please click all that apply:

- ☒ Termination / Layoff
- ☐ Discipline
- ☒ Demotion / Reduced Hours
- ☐ Suspension
- ☒ Denial of Benefits
- ☒ Failure to Promote
- ☐ Failure to Hire / Re-hire
- ☐ Negative Performance Evaluation
- ☐ Threat to Take any of the Above Actions
- ☒ Harrassment / Intimidation
- ☒ Other (please describe)  
retaliation

### When did you suffer the most-recent adverse action?

Each whistleblower protection law that OSHA administers requires that complaints be filed within a certain number of days after the alleged adverse action. The time periods vary from 30 days to 180 days, depending on the specific law (statute) that applies. For example, Section 11(c) of the OSH Act, which covers workplace safety and health matters, requires that a complaint be filed within 30 days of the adverse action. Under certain extenuating circumstances, however, OSHA may accept a complaint filed after the deadline has expired. [Click here for a summary of the filing deadlines that apply to each statute.](#)

Date of Most-Recent Adverse Action (Required)

09/10/2020

Set

(If you cannot remember the exact date, please enter the approximate date.)

Why do you believe you suffered the adverse employment action(s)? (at least one required)

Please check all that apply:

- ☒ Called / Filed complaint with OSHA
- ☒ Called / Filed complaint with another government agency
  - EEOC
- ☒ Complained to management about unlawful conditions, conduct, or practices
- ☐ Testified or provided statement in a proceeding (e.g., government inspection or investigation)
- ☐ Because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information
- ☐ Because you complained about failure to pay the minimum wage, overtime pay, wage recordkeeping, child labor, or family and medical leave requirements
- ☐ Because you complained about migrant or seasonal worker protections, lie detector tests, or worker protections in certain temporary guest worker programs
- ☐ Because you engaged in protected concerted activities (group action to improve wages, benefits, and working conditions), union activities, supported a union, or chose not to engage in union activities
- ☒ Reported an injury, illness, or accident
- ☐ Participated in safety and health activities
- ☐ Refused to perform unsafe or illegal task
- ☒ Other (please describe)
  - was cleared for work after enduring 2 work related injuries and was cleared for work. I filed a civil complaint against my employer for unsafe work environment and insurance bad faith by the workers compensation company. The employer terminated my employment after I served the workers compensation company with the

What reason(s) did your employer give for the adverse action(s)?

reporting unsafe work environment, suing them for premises liability injuries, unsafe work environment, and asking to be put back to work after enduring 2 work related injuries. now my family has no health insurance.

Is there anything else that that you would like OSHA to know about what happened?

The company committed several violations of my civil rights



When you suffered the adverse action, who did you work for?

Company Name James Hardie Building Products  
(Required)

Is this a private or public sector employer? (Required)

☒ Private

☐ Public

When you suffered the adverse action, where was your worksite?

(e.g., home office; official duty station; dispatch; home terminal)

Worksite Address when Alleged Retaliation Occurred (Street, City, State, Zip):

Street: 3000 Waltham way

City: Sparks

State: (Required) Nevada



Zip: 89434

How can OSHA contact your employer?

Employer Name (if different from "Company Name" above): James Hardie Building Products

Name and Title of Management Person (for contact purposes only)

Name: Paul M.I. Lodenstein

Title: H.R. Manager

Phone: 775-303-8540 Ext

Name and Title of Your Supervisor:

Name: josh M.I. Baker

Title: supervisor

Employer Mailing Address (if different from worksite address):

Street: 26300 La Alameda suite 400

City: Mission Viejo

State: California



Designated Representative

Other Contact Person?

Name: Christian

M

Fulkerson

Preferred Method of Contact: Email

Preferred Time of Contact: Morning

Email Address: heathfulkerson99@gmail.com

Telephone Numbers (include area code) (at least one required):

Home: 775-404-2026

Work: ###-###-####

Ext

Cell: 775-580-5078

No Telephone Available

Mailing Address (Street, City, State, Zip) (Required):

Street: p.o. box 60686

City: Reno

State: Nevada

Zip: 89506

Name (Required): Heath

V

Fulkerson

How can OSHA contact you?

Zip: 92691

Employer Phone: 775-355-3000

Alt Phone: ###-###-####

Employer Fax: ###-###-####

Alt Fax: ###-###-####

Employer Email: Paul.Lodenstein@jameshardie.com

Type of Business: manufacturing

Do you have an authorized / designated representative (e.g., attorney, shop steward)?

☒ No  
☐ Yes

Are you an authorized / designated representative (e.g., attorney, shop steward) that is filing on behalf of an employee?

☒ No  
☐ Yes

If yes for either, please provide contact information for the authorized/designated representative:

Name: First Name M.I. Last Name

Title: Title

Organization Name (if any): Organization Name

Union Affiliation (if any): Union Name

Address (Street, City, State, Zip Code):

Street: Street Address

City: City

State:

Zip: #####

Phone (day): ###-###-#### Ext:

Email: Email Address

☐ By checking this box, I certify that the named employee has authorized me to act as their representative for purposes of this complaint.

## Submission

Please review the information you have entered to ensure that it is accurate. You may change any answers as needed before submitting the form.

**NOTE: It is unlawful to make any materially false, fictitious, or fraudulent statement to an agency of the United States. Violations can be punished by a fine or by imprisonment of not more than five years, or by both. See 18 U.S.C. 1001(a); 29 U.S.C. 666(g).**

**By clicking SUBMIT below, you certify that the information in this complaint is true and correct to the best of your knowledge and belief. Please click "Submit" only once. Remember that you cannot file a whistleblower complaint with OSHA anonymously. If you file a complaint, OSHA will contact you to discuss your complaint. If OSHA proceeds with an investigation, the employer will be notified of your complaint.**

**We suggest that you print and save this page for your records.**

Print this Complaint

SUBMIT your complaint to OSHA

Cancel, Return to [www.whistleblowers.gov](http://www.whistleblowers.gov)

**PRIVACY ACT STATEMENT**

This form requests personal information that is relevant and necessary to determine whether and how to conduct an investigation. OSHA collects this information in order to process complaints under its statutory and regulatory authority. Once a complaint is filed, the individual's name and information about the allegations of retaliation will be disclosed to the employer. During the course of an OSHA investigation, information contained in an investigative case file may be disclosed to the parties in order to resolve the complaint. During an investigation, information about the complaining party and the employer will not be released to the public except to the extent allowed under the Freedom of Information Act (FOIA). However, once a case is closed, it is possible that information contained in the complaint or a case file may be released to the public as required by the FOIA. Any such documents will be redacted as appropriate under the FOIA and the Privacy Act.

**PAPERWORK REDUCTION ACT STATEMENT**

According to the Paperwork Reduction Act, an Agency may not conduct or sponsor, and no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this voluntary collection of information is estimated to be one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to OSHA.DWPP@dol.gov or to the Directorate of Whistleblower Protection Programs, Department of Labor, Room N4624, 200 Constitution Ave., NW, Washington, DC; 20210; Attn: Paperwork Reduction Act Comment. (This address is for comments only; do not send completed complaint forms to this office.)

OMB Approval # 1218-0236; Expires: 09-30-2020

OSHA 8-60.1. (Rev.06/17)



Occupational Safety and Health  
Administration  
200 Constitution Ave NW  
Washington, DC 20210  
☎ 800-321-6742 (OSHA)  
TTY  
[www.OSHA.gov](http://www.OSHA.gov)

**FEDERAL GOVERNMENT**

White House  
Severe Storm and Flood Recovery  
Assistance  
Disaster Recovery Assistance  
[DisasterAssistance.gov](http://DisasterAssistance.gov)  
[USA.gov](http://USA.gov)  
No Fear Act Data  
U.S. Office of Special Counsel

**OCCUPATIONAL SAFETY AND  
HEALTH**

Frequently Asked Questions  
A - Z Index  
Freedom of Information Act  
Read the OSHA Newsletter  
Subscribe to the OSHA Newsletter  
OSHA Publications  
Office of Inspector General

**ABOUT THE SITE**

Freedom of Information Act  
Privacy & Security Statement  
Disclaimers  
Important Website Notices  
Plug-Ins Used by DOL  
Accessibility Statement